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State of Maryland
BOARD OF PUBLIC WORKS ADVISORY

www.bpw.state.md.us

BPW Advisory No.: 2005-1

Date: January 5, 2005

Subject: Small Business Reserve Program

Effective Date: Immediately

Purpose: To establish the process by which:

(1) Designated procurement units award not less than 10% of the unit's total dollar value of goods, supplies, services, maintenance, construction, construction-related services, architectural services and engineering service contracts directly to small businesses.

(2) Certain bids or proposals are reserved for participation by small businesses only.

Authority: The Small Business Reserve Program in State Procurement Law mandates that at least 10% of the dollar value of procurements made by designated procurement units be from small businesses at the prime contract level. This amount is not a goal, but a mandate. Sections 14-501 – 14-505, State Finance and Procurement Article, Maryland Code [Chapter 75, Laws of 2004].

Exemptions:

- Where governing federal law or federal grant provisions conflict with this Small Business Reserve Program, the procurement is exempt from these requirements.
- Procurements from State Use Industries, Blind Industries and Services of Maryland, and Certified Sheltered Workshops (COMAR 21.11.05) and from Maryland Vending Facilities Program for the Blind (COMAR 21.11.09) are exempt from these requirements.
- The value of exempted contracts is excluded from the procurement dollar base from which the 10% reserve is calculated.

Definitions:

A designated procurement unit means the:

- (1) State Treasurer;
- (2) Department of Budget and Management;
- (3) Department of Business and Economic Development;
- (4) Department of the Environment;
- (5) Department of General Services
- (6) Department of Health and Mental Hygiene;
- (7) Department of Housing and Community Development;
- (8) Department of Human Resources;
- (9) Department of Juvenile Services
- (10) Department of Labor, Licensing, and Regulation;
- (11) Department of Natural Resources;
- (12) State Department of Education;
- (13) Department of State Police;
- (14) Department of Public Safety and Correctional Services;
- (15) Department of Transportation;
- (16) University System of Maryland;
- (17) Maryland Port Commission;
- (18) State Retirement Agency;
- (19) Maryland Insurance Administration;
- (20) Maryland Stadium Authority;
- (21) State Lottery Agency; and
- (22) Morgan State University.

A small business means a for-profit business, other than a broker, certified by the Department of General Services as a small business that meets all the following criteria:

- It is independently owned and operated.
- It is not a subsidiary of another business.
- It is not dominant in its field of operation.
- Its wholesale operations did not employ more than 50 persons and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years.
- Its retail operations did not employ more than 25 persons and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years.

- Its manufacturing operations did not employ more than 100 persons and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years.
- Its service operations did not employ more than 100 persons and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years.
- Its construction operations did not employ more than 50 persons and its gross sales did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years.

Small business reserve means procurements for which awards are reserved, or limited, to certified small businesses.

Small Business Reserve - Procedures:

1. Expenditure Plans — Each designated procurement unit shall prepare: (1) a fiscal-year procurement-expenditure forecast reflecting anticipated expenditures under contracts to be awarded in the fiscal year, or expenditures under current contracts; and (2) a plan allocating 10% of the total anticipated expenditures under these contracts to small businesses. Expenditures in a current fiscal year under a multiyear contract awarded in a prior fiscal year shall be included in the forecast and will be counted toward both total procurement dollars and small business reserve dollars, as applicable. This excludes expenditures under multiyear contracts awarded before October 1, 2004. The unit shall use its approved budget, record of historical spending patterns, and the Department of General Services small business bidders' list to develop the plan. Procurements conducted by any procurement method under COMAR Title 21 may be designated as small business reserve procurements.
2. Procurement Review Groups — Designated procurement units should expand the responsibilities of their respective MBE procurement review groups (see BPW Advisory 2001-2) to include a concurrent review of upcoming procurement solicitations for potential designation as small business reserve procurements. The Departments of General Services, Transportation, and Public Safety and Correction Services review groups should also review upcoming solicitations for possible designation as small business *preference* procurements under COMAR 21.11.01.
3. Public Notice — Notice of a solicitation for a small business reserve procurement over \$25,000 must comply with COMAR 21.05.02.04 (Public Notice) **and** state that the procurement is reserved for award to certified small businesses only.

4. Content of Solicitation — Each small business reserve solicitation must include the Notice to Bidders/Offerors that is attached to this Advisory.
5. Certified Small Businesses — A procurement officer may verify that a bidder or offeror is a certified small business by checking the DGS Web site *www.dgs.state.md.us* and then clicking on the *Small Business Reserve* button to view the small business bidders' list.
6. Ineligible Bids or Proposals — A bid or proposal received for a small business reserve procurement that is from a business not certified as a small business by the DGS is ineligible for consideration unless DGS certifies the business before award. A business that is not certified may apply for certification by accessing the DGS Web site at *www.dgs.state.md.us* and then clicking on the *Small Business Reserve* button. The procurement officer shall then verify with DGS that the business has been certified and added to the small business bidders' list. Following that verification, the procurement officer may award the contract. If a bidder or offeror fails to become certified or is otherwise ineligible to participate in a procurement designated as a small business reserve procurement, the bid or proposal shall be rejected on the grounds that the bidder or offeror is not responsible.
7. Records and Reporting — Each designated procurement unit shall maintain a record of small business reserve contract payments and submit a report to the Board of Public Works no later than September 30 for the preceding fiscal year. The report shall contain information on the operation and effectiveness of the small business reserve program, the amount and percentage of total procurement dollars paid to certified small businesses, and any other information that COMAR or the Board of Public Works requires.

Questions may be addressed to:

Board of Public Works
80 Calvert Street, Room 117
Annapolis, Maryland 21401
Fax: 410.974.5240 Toll Free: 877.591.7320
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ATTACHMENT TO BPW ADVISORY 2005-1

NOTICE TO BIDDERS/OFFERORS **SMALL BUSINESS RESERVE PROCUREMENT**

This is a Small Business Reserve procurement for which award is limited to certified small business vendors. Only businesses that meet the requirements set forth in State Finance and Procurement Article, §§ 14-501 - 14-505, Annotated Code of Maryland, and who are registered with the Department of General Services Small Business Reserve Program are eligible for award.

For the purposes of a Small Business Reserve procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:

- It is independently owned and operated;
- It is not a subsidiary of another business;
- It is not dominant in its field of operation;
- Its **wholesale** operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*
- Its **retail** operations did not employ more than 25 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*
- Its **manufacturing** operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;*
- Its **service** operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;* and
- Its **construction** operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years.*

*If a business has not existed for three years, the employment and gross sales average(s) is the average for each year or part of a year during which the business has been in existence.

Further information on the certification process is available at www.dgs.state.md.us and click on the Small Business Reserve hyperlink.